

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013100071

ORDER DENYING REQUEST FOR
CONTINUANCE AND SETTING
DATES TO FILE PREHEARING
CONFERENCE DOCUMENTS AND
TO EXCHANGE EXHIBITS

On November 12, 2013, the parties filed a stipulation to delay filing prehearing conference documents. On November 13, 2013, the parties filed a joint request to continue a prehearing conference (PHC) set for November 18, 2013, and stipulated to extend the time for filing PHC statements, witness lists and exhibit lists and for the exchange of documents, because the parties are engaged in settlement discussions and are hopeful the matter will settle. The parties did not request a continuance of the due process hearing, which is set for November 21, 2013.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH conducts PHC's on Mondays and Fridays. The parties did not propose a date for the PHC and did not request a continuance of the due process hearing. November 18, 2013, is a Monday three days before the date the hearing is set. Thus, there is no available date upon which to conduct a PHC before the hearing date. Good cause to continue the PHC has not been shown.

The time to file PHC documents and exchange exhibits is set by statute and set forth in the Scheduling Order. The parties' stipulation is taken into consideration but is not binding on OAH. The parties' stipulation to extend the time to file PHC statements, pre-hearing motions, witness and exhibit lists, and to exchange documents, will be considered a request to continue those due dates to the dates requested. The parties' request to permit the parties to file PHC statements, pre-hearing motions, witness and exhibit lists, on November 15, 2013, and to exchange documents on November 18, 2013, is granted.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. PHC statements, pre-hearing motions, witness and exhibit lists, shall be filed no later than 5:00 p.m., on November 15, 2013. The parties shall exchange documents no later than 5:00 p.m., on November 18, 2013,

IT IS SO ORDERED.

Dated: November 13, 2013

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings